IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Manphool v. State of Raj. & Ors.

(1)S.B.CIVIL WRIT PETITION NO.907/1995

Sher Singh v. State of Raj. & Ors.

(2)S.B.CIVIL WRIT PETITION NO.908/1995

Duni Chand v. State of Raj. & Ors.

(3)S.B.CIVIL WRIT PETITION NO.909/1995

Petitions under Article 226 of the Constitution of India.

Date of Order : 13th December, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. N.S.Charya, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Sudhir Sharma, for the respondents.

BY THE COURT :

These writ petitions are directed against the judgment dated 7.3.1995 passed by Board of Revenue

for Rajasthan, Ajmer and the judgment dated 27.8.1991 passed by by Revenue Appellate Authority, Sriganganagar. The Revenue Appellate Authority, Sriganganagar by the order dated 27.8.1991 cancelled allotment of small patch of land to the petitioners and the Board of Revenue by the judgment dated 7.3.1995 refused to interfere with the order dated 27.8.1991 in its appellate jurisdiction.

The facts giving rise to present writ petitions are that the petitioners applied for allotment of small patch of land adjacent to their khatedari land. The small patches of land as applied by the petitioners were allotted to them in accordance with the Rajasthan Colonisation (Bhakhra Project Government Land Allotment and Sale) Rules, 1965.

A challenge was given to the allotment of small patch of land to the petitioners by private respondents on the ground that the land was allotted without considering their pending applications for allotment of land. The Revenue Appellate Authority by judgment dated 27.8.1991 accepted the appeal preferred by private respondents and set aside the allotment of small patches to the petitioners. The Revenue Appellate Authority held that the land allotted to the petitioners being of 9.13 bighas could not be classified as small patch. The Revenue Appellate Authority also held that the land was allotted to

present petitioners without giving any notice to present private respondents whose applications for permanent allotment of land were already pending. The petitioners being aggrieved by the judgment passed by the Revenue Appellate Authority dated 27.8.1991 preferred a second appeal before the Board of Revenue for Rajasthan, Ajmer as prescribed under Section 76 of the Rajasthan Land Revenue Act, 1956. The Board of Revenue by its judgment dated 7.3.1995 affirmed the judgment dated 27.8.1991 passed by the Revenue Appellate Authority, Sriganganagar by refusing to interfere in the matter being not suffered by any illegality. Hence the petitioners preferred the present writ petitions.

The contention of counsel for the petitioners is that the Revenue Appellate Authority failed to appreciate that the land allotted to the petitioners was less than five bighas and is also not situated in the same murrabba. It is emphasised by counsel for the petitioners that small patches are adjacent to the khatedari lands of the petitioners and, therefore, Revenue Appellate Authority erroneously held that the land allotted is not a small patch. It is further contended by counsel for the petitioners that the private respondents admittedly submitted application for permanent allotment of land and not for small patch, therefore, there was no occasion to issue any notice to them before making

allotment in favour of the petitioners. Counsel for the petitioners asserted that nobody else than the petitioners having land adjoining to small patch applied for allotment of land treated as small patch.

Heard counsel for the parties.

It is not at all in dispute that the land allotted to petitioners is less than five bighas and nobody else having khatedari land adjoining to small patches, allotted to the petitioners, except the petitioners submitted application for such allotment. The application of private respondents pertains to permanent allotment and not to allotment of small patches. It is also a position admitted that total land i.e. of 9.13 bighas is not situated in one murrabba but is expanded in four murrabbas. Such a land could not be subjected to permanent allotment. The land allotted to petitioners Shri Manphool, Sher Singh and Duni Chand is of 4.4 bighas, 3.12 bighas and 1.17 bighas respectively, i.e. less than five bighas. The allotting authority, therefore, rightly treated the land in dispute as small patch and allotted to the petitioners. The Revenue Appellate Authority failed to appreciate that the land being expanded in parts in different murrabbas could not be subjected to permanent allotment but was fit for allotment as small patch.

The Revenue Appellate Authority also erred while holding that the notice was required to be given while making allotment of small patch to the petitioners. As stated above, the private respondents never submitted application for allotment of small patch, therefore, their case could not be considered with the petitioners. The applications of private respondents relate to permanent allotment and they are also not having any khatedari land adjoining to the small patch in dispute, therefore, there was no need to give any notice to them before making allotment of small patch to the petitioners. The Board of Revenue also failed to rectify the error committed by Revenue Appellate Authority. In view of it the judgment of Board of Revenue is also erroneous.

In view of whatever discussed above these petitions for writ deserve acceptance and, therefore, the same are allowed. The judgment impugned dated 7.3.1995 passed by Board of Revenue for Rajasthan, Ajmer and the judgment dated 27.8.1991 passed by by Revenue Appellate Authority, Sriganganagar are hereby quashed. The allotment of small patch of land to the petitioners by the allotting authority is affirmed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.